

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K03-S-153**

**THOMAS REALTY**

**APPELLANT**

**V.**

**ORDER NO. K-19150**

**POWELL COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

\* \* \* \* \*

The Kentucky Board of Tax Appeals has delegated authority to Robert Layton to act as a hearing officer pursuant to KRS 13B.030. The hearing officer has considered the evidence of record in this case submitted at a hearing, and the transcript filed November 17, 2003, has entered a recommended order in compliance with the provisions of KRS 13B.110. The Appellant filed exceptions to the recommended order. The Board has reviewed the record, the recommended order, and the exceptions. The recommended order states:

**FINDINGS OF FACT**

This assessment appeal is for real property owned by Thomas Realty located at 5377 Main Street, Clay City, Powell County, Kentucky. The property includes a Shell gas station, a convenience store, a Subway sandwich shop, a bank, and a pizza shop, all in the same building. The Powell County Board of Assessment Appeals affirmed the Powell Property Valuation Administrator's \$716,568 assessment. Thomas filed a timely appeal from the local board with the Kentucky Board of Tax Appeals, contending the value is \$450,000.

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Barbara Thomas testified the cost of the building in 2001 was \$472,500. However, that cost did not include the cost of the bank. Thomas was unable to provide any specifics or breakdown or documentation of those costs, other than a price for the building, canopy and lot. Because of the complete lack of documentation of the cost components, the hearing officer finds the cost testimony has minimal probative value. At the hearing Thomas testified the property was insured for \$300,000, and testified the property was a money-losing enterprise in 2002. The hearing officer ordered Thomas to provide a copy of the insurance declarations page and a copy of the tax returns for the property within 30 days of the hearing in order to document her testimony. Neither was provided, and the hearing officer finds her testimony on those points without further documentation which she agreed could be submitted has minimal probative value.

Property Assessment Coordinator Jeff Cress, from the Revenue Cabinet's Division of Local Valuation, testified in support of the \$716,568 value. Photographs, a detailed cost approach generated from Marshall and Swift, and comparable sales were introduced in support of the assessed value. *Exhibit 3, Transcript, p. 63-90.*

The hearing officer finds the cost approach and comparable sales approach as applied by Cress to be most appropriate for use in valuing the subject property, and finds the fair cash value of the property as of January 1, 2003 is \$716,568.

## **CONCLUSIONS OF LAW**

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The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Powell County BAA pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Powell County BAA, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that "all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Board of Tax Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889(1977).

The hearing officer finds the fair cash value of the subject property as of January 1, 2003 is \$716,568.

## **RECOMMENDED ORDER**

The hearing officer recommends the September 10, 2003 final ruling of the Powell County BAA be affirmed, and recommends the real property be assessed at a fair cash value of \$716,568 as of January 1, 2003.

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This is a recommended order, and each party shall have fifteen (15) days from the date this recommended order is mailed to file exceptions to the recommendations with the Kentucky Board of Tax Appeals. Failure to file exceptions to the recommended order may result in a party being unable to seek judicial review on appeal. This recommended order has been sent by first class mail on the date below to the last known address of the parties.

**ORDER**

The Kentucky Board of Tax Appeals has considered the record, the exceptions filed and accepts the recommended order of the hearing officer, and adopts it as the Board's final order.

This is a final and appealable order which may be appealed to the Circuit Court of the county in which the appeal originated by filing a petition of appeal in the appropriate Circuit Court within thirty (30) days after this final order is mailed or delivered by personal service, pursuant to KRS 13B.140(1) and KRS 131.370(1). Copies of the petition of appeal shall be served by the Petitioner upon the Kentucky Board of Tax Appeals and all parties of record. The petition of appeal shall include the names and addresses of all parties to the proceedings and the Kentucky Board of Tax Appeals, and a statement of the grounds on which the review is requested. The petition of appeal shall be accompanied by a copy of this final order. Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

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**DATE OF ORDER  
AND MAILING:  
MAY 12, 2004**

BILL RICE  
KENTUCKY BOARD OF TAX APPEALS

ATTEST:

BILL BEAM, JR.  
EXECUTIVE DIRECTOR  
KENTUCKY BOARD OF TAX APPEALS